

**INTERAGENCY AGREEMENT**  
**BETWEEN**  
**WASHINGTON STATE**  
**DEPARTMENT OF TRANSPORTATION**  
**AND**  
**TRANSPORTATION IMPROVEMENT BOARD**  
**AGREEMENT NUMBER GCA 4228**

THIS AGREEMENT is made and entered into by and between the state of Washington, Department of Transportation, acting by and through the Secretary of Transportation, hereafter referred to as "WSDOT", and the Transportation Improvement Board, hereinafter referred to as "TIB".

WHEREAS, TIB has developed a small city program to preserve and improve the roadway system in a manner that is consistent with local needs pursuant to WAC 479-12;

WHEREAS, WSDOT and TIB have determined paving for small city projects funded through TIB can be accomplished more cost effectively if the paving is done in cooperation with WSDOT paving projects occurring in proximity;

WHEREAS, to achieve such cost savings, TIB may request WSDOT to provide certain services and WSDOT may agree to provide such services by way of a mutually executed Task Order document.

NOW, THEREFORE, by virtue of RCW 47.28.140, and in consideration of the provisions, covenants, terms, conditions, and performance contained herein, or attached hereto and incorporated and made part hereof, it is mutually agreed as follows:

**1.0    SCOPE**

- 1.1    This Agreement allows TIB and WSDOT to cooperate in the TIB Small Cities Paving Program. The Program's objective is to facilitate cost effective paving through contracting with WSDOT contractors paving on WSDOT projects in the vicinity of the small city project funded through TIB. This Agreement constitutes the Master Agreement between TIB and WSDOT. Each small city paving project to be undertaken under this Agreement will be the subject of a Task Order substantially in the form of Exhibit A attached hereto. The terms and conditions of the Master Agreement shall apply to each Task Order. All work performed pursuant to an executed Task Order shall be under the direction and control of WSDOT.

## **2.0 TERM OF AGREEMENT**

- 2.1 Unless otherwise provided here, the term of this Agreement shall commence on the day and year of the last signature below and continue until June 30, 2007. This Agreement may be extended for two additional one-year terms for a total term not to exceed five (5) years.

## **3.0 DESIGN PREPARATION**

- 3.1 The plans, specifications and cost estimate (PS&E) for the TIB funded small city paving project shall be prepared by TIB through (1) city staff; (2) independent consultant retained by the city; or (3) WSDOT, if requested by TIB. The Task Order shall identify who will be responsible to prepare the PS&E.
- 3.2 If the design package is to be prepared by the city or its consultant, the package shall include plan sheets suitable for incorporation with WSDOT contract documents, a list of contract items needed to do the paving work and any special provisions for unusual or local conditions. All design work shall be prepared in accordance with the current state of Washington Standard Specifications for Road, Bridge and Municipal Construction, and amendments thereto and shall utilize standard work items. All completed design work shall be submitted to WSDOT at least ninety (90) days before the scheduled advertisement date unless TIB and WSDOT have agreed to an alternate schedule for the specific project. TIB agrees that the city shall assist WSDOT in answering bid questions and resolving any design issues that may arise. All comments and clarifications must go through WSDOT.
- 3.3 If the design is to be prepared by WSDOT, TIB agrees to provide a clear description of the work to be included in the WSDOT contract documents and any special provisions required for unusual or local conditions. The completed description of work shall be submitted to WSDOT at least ninety (90) days before the scheduled advertisement date unless TIB and WSDOT have agreed to an alternate schedule for the specific project. TIB shall compensate WSDOT for preparing the design at an amount agreed to by the parties in the Task Order.
- 3.4 If the design of the small city paving project imposes restrictions such as work hours, noise levels, etc., that information must be provided to WSDOT before WSDOT's contract documents are assembled. Any effort to impose additional restrictions after the WSDOT contract is awarded will require a change order which will likely increase costs. Also, if the small city paving project requires necessary permits, TIB shall obtain them and provide copies to WSDOT prior to advertisement of the WSDOT contract.

#### **4.0 PROJECT AND AWARD**

- 4.1 WSDOT shall prepare the contract documents which will include the separate bid items necessary for the small city paving work and then advertise for construction bids in accordance with appropriate WSDOT standard specifications. Upon bid opening, WSDOT will provide a list of bid tabulations and bid results to TIB prior to award of the WSDOT contract. Within seven (7) days of receipt of the bid information, TIB shall notify WSDOT as to whether the small city paving work is to be included with the WSDOT project. If no such notice is received within the seven (7) day timeframe, the work will not to be included.

#### **5.0 COMPENSATION**

- 5.1 TIB shall pay WSDOT within thirty (30) days of receipt of properly completed invoices for all costs incurred in performance of executed Task Orders. These costs shall include payments to the contractor derived by WSDOT from observations of contract item work, multiplied where appropriate by bid prices per unit. Any additional items created in change orders shall also be included. Sales tax, where appropriate, will be added to the contract payment total. WSDOT engineering costs and overhead shall not be detailed, but shall be included as an agreed percentage of the contract amount total as set forth in the Task Order.

#### **6.0 MAINTENANCE OF RECORDS**

- 6.1 During construction of the WSDOT project and for a period of not less than three (3) years from the date of payment to WSDOT, the records and accounts pertaining to the small city paving portion of the WSDOT contract will be maintained and shall be kept available by WSDOT for inspection and audit by TIB and for use in the event of a litigation, claim or any other purpose. If any litigation claim or audit is started before the expiration of the three (3) year retention period, the records shall be retained until all litigation, claims or audit findings involving the records are resolved.

#### **7.0 INSPECTION**

- 7.1 WSDOT will allow TIB and the small city representatives to consult with and inquire of WSDOT's project engineer, attend all meetings, and have access to all documentation as to all matters concerning the small city paving portion of the WSDOT contract. TIB and the small city may also place personnel on the work site to view the small city paving work but shall not provide direction, directly or indirectly to the contractor. All formal contacts between TIB or small city representatives and WSDOT's contractor shall be made through WSDOT's project engineer.

## **8.0 TERMINATION**

- 8.1 This Agreement shall be terminable at will by either party with written notice, except that work in progress pursuant to a Task Order shall be completed in accordance with the Task Order, unless the parties agree to other terms at the time of termination.

## **9.0 RIGHT OF ENTRY**

- 9.1 TIB shall obtain for WSDOT a right of entry from the small city for the purpose of carrying out the work activities set forth in the Task Order. The right of entry must be secured prior to the execution of the Task Order.

## **10.0 ELIGIBILITY**

- 10.1 TIB shall determine which small cities qualify for the small cities paving program. Regardless of qualifications, WSDOT retains the right to decide which small city paving projects are to be included in WSDOT contracts.
- 10.2 Work completed at the request of a city or on behalf of a city without prior written approval by TIB shall not be reimbursable by TIB.

## **11.0 NOTICES**

- 11.1 Any written notice or other written communication between the parties, required or permitted pursuant to this Agreement, shall be personally delivered or by certified mail, postage prepaid and return receipt requested, to the other party at the address set forth below, or to such other address as that party may from time to time advise by written notice to the other party. The date of personal delivery as evidenced by a date stamp of the receiving party or an affidavit of the sending party, or the date of the certified mail return receipt, shall be presumed to be the date of the delivery of any such notice or communication.

NOTICES TO WSDOT:

Mike Horton  
WSDOT Highways & Local Programs  
PO Box 47390  
Olympia, WA 98504-7390

Phone: (360) 705-7375

## NOTICES TO TIB:

Steve Gorcester  
Transportation Improvement Board  
PO Box 40901  
Olympia, WA 98504-0901

Phone: (360) 586-1140

### **12.0 CHANGE ORDERS**

- 12.1 TIB has authorized WSDOT to initiate, negotiate, document and execute all required change orders regarding the small city paving work. Required change orders involve such changes in quantities or alterations in the work as are necessary to satisfactorily complete the paving work as determined by WSDOT. WSDOT shall process all such change orders in the same manner as set forth in Section 1-2.4(c), Approval of Changes WSDOT Construction Manual, current edition. All other change orders shall be considered elective.
- 12.2 WSDOT will advise TIB of any proposed required change order and provide it with an opportunity, if time permits, to review the change order before execution. WSDOT will determine the length of the review time based upon the need to expedite the change order to avoid delay to the overall project.
- 12.3 Any elective change order shall require the written approval of TIB. A decision to execute an elective change order shall be made by mutual agreement of WSDOT and TIB.
- 12.4 TIB may request additions to the small city paving work through WSDOT. WSDOT shall have the discretion to accept or reject the requested additional work.
- 12.5 WSDOT will make available to TIB all change order documentation relating to the small city paving work.

### **13.0 PROJECT ACCEPTANCE**

- 13.1 WSDOT shall notify TIB that the small city paving work has been physically completed and the work is ready for a joint inspection by WSDOT and TIB personnel. If upon such inspection TIB, in consultation with the small city, has no objections to the work or does not request such an inspection within ten (10) days of the notice from WSDOT, TIB agrees to deliver a letter of acceptance of the work on behalf of TIB and the small city. The acceptance letter will include a release of WSDOT from all future claims or demands of any nature resulting from the performance of the work under the Task Order, subject to any contractor

claims caused by the negligent acts or omissions of WSDOT in administering the paving work pursuant to Section 14.1, Claims for Additional Payment.

- 13.2 If a letter of acceptance is not received within twenty (20) days of the joint inspection or within twenty (20) days of the notice of physical completion, if no inspection is requested, the small city paving work shall be considered accepted by TIB and the small city, and therefore, WSDOT shall be considered released from all future claims and demands of any nature resulting from the performance of the paving work under the Task Order, subject to any contractor claims caused by the negligent acts or omissions of WSDOT in administering the paving work pursuant to Section 14.1, Claims for Additional Payment.
- 13.3 TIB may withhold this acceptance of the paving work by submitting written notification to WSDOT within twenty (20) days following notice of physical completion of the paving work. This notification shall include the reason(s) for withholding the acceptance.

#### **14.0 CLAIMS**

##### **14.1 Claims for Additional Payment.**

- 14.1.1 In the event the contractor makes a claim for additional payment in accordance with section 1-09.11(2) of the WSDOT standard specifications regarding or relating to the small city paving work, WSDOT will notify TIB of the claim.
- 14.1.2 TIB shall consider the merits of the claim with WSDOT's assistance and make the decision as to how the claim is to be resolved.
- 14.1.3 In the event such contractor claims are not resolved, WSDOT shall defend such claims and pay any court judgment or arbitration award resolving such claims. TIB agrees to reimburse WSDOT for payment of such judgments or awards as well as WSDOT defense costs, provided that TIB shall have no obligation to pay such claims or defense costs to the extent that the claims are caused by the negligent acts or omissions of WSDOT in administering the small city paving work.

##### **14.2 Claims for Damages**

- 14.2.1 After the small city paving work is accepted pursuant to Section 13, Project Acceptance, WSDOT shall have no further responsibilities within the paving work limits, including the payment of any claims for damages or loss attributable to bodily injury to or destruction of property that occurs within the paving work limits. Nothing in this section, however, shall remove WSDOT any responsibilities defined by the current laws of the state of Washington or from any liabilities for damage caused by

WSDOT's own negligent acts or omissions independent of the work performed under this Agreement.

## **15.0 DISPUTES**

15.1 In the event that a dispute arises under this Agreement, TIB and WSDOT shall each appoint a member to a disputes board, these two members shall select a third member not affiliated with either Agency. Any costs incurred in using the services of a third member shall be equally shared by WSDOT and TIB. The decision made by this board shall be final and binding on the parties to this Agreement.

## **16.0 ASSIGNMENT**

Neither party shall assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of the other party.

## **17.0 GOVERNING LAW**

This Agreement shall be governed by the laws of the state of Washington. The venue of any action brought hereunder shall be in Thurston County Superior Court.

## **18.0 PERSONAL LIABILITY OF PUBLIC OFFICERS**

No officer or employee of WSDOT or TIB shall be personally liable for any acts or failure to act in connection with this Agreement, it being understood that in such matters they are acting solely as agents of their respective agencies.

## **19.0 AMENDMENTS**

Either party may request changes in these provisions. Such changes, which are mutually agreed upon shall be incorporated as written amendments to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by the authorized representatives of the parties hereto.

## **20.0 SECTION HEADINGS**

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

## **21.0 COUNTERPARTS**

This Agreement may be executed in two counterparts, each of which shall be deemed to be an original having identical legal effect.

## 22.0 COMPLETE AGREEMENT

This document contains all terms and conditions agreed upon by the parties. No agent of either party has authority to make, and be bound by or be liable for, any statement, representation, promise or agreement not set forth or made by written amendment hereto.

## 23.0 AFFECT OF INVALIDITY OF ANY PROVISION

If any term or condition of this Agreement shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other term or condition, or any part thereof, which in itself is valid if such remainder conforms to the requirements of applicable law and the intent of this Agreement. No controversy concerning any term or condition shall delay the performance of any other term or condition except as herein allowed.

## 24.0 FORCE MAJEURE

It is understood and agreed that neither party shall be required to keep this Agreement in effect during the periods it is prevented from doing so by strikes, riots, civil commotion, terrorism, or other causes beyond said party's control, or if performance is made impossible by floods, high water, earthquake, or other damage from the elements, or by Acts of God, acts of military aggression, or governmental action.

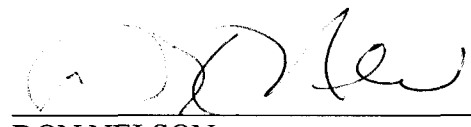
IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the date below:

TRANSPORTATION  
IMPROVEMENT BOARD

  
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STEVE GORCESTER  
EXECUTIVE DIRECTOR


DATE: 10/27/2004

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

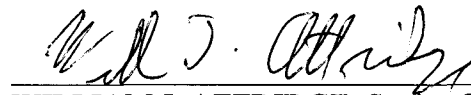
  
\_\_\_\_\_  
DON NELSON  
DIRECTOR, ENVIRONMENTAL AND  
ENGINEERING PROGRAMS

DATE: 11/1/04

Approved as to Form:

  
\_\_\_\_\_  
JEANNE A. CUSHMAN, AAG  
COUNSEL TO TIB  
DATE: 10-27-04

Approved as to Form:

  
\_\_\_\_\_  
WILLIAM J. ATTRIDGE, Senior Counsel  
COUNSEL TO WSDOT  
DATE: 10-27-04